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 Rep. Mike Cerbo
 Rep. Bob Gardner
 Rep. Ellen Roberts
 Sen. Peter Groff
 Sen. Shawn Mitchell
 Sen. Brandon Shaffer
 Sen. Steve Ward

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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

February 20, 2007

The Committee on Legal Services met on Tuesday, February 20, 2007, at 7:36 a.m. in HCR 0111. The following members were present:

Senator Veiga, Chair
 Senator Groff (present at 7:49 a.m.)
 Senator Ward
 Representative M. Carroll
 Representative Cerbo (present at 7:48 a.m.)
 Representative B. Gardner
 Representative McGihon, Vice-chair
 Representative Roberts

Senator Veiga called the meeting to order. She said the first order of business is agenda item 1 - House Bill 07-1167. She said a rule issue has been raised concerning physical therapists.

Don Mielke, Colorado Chiropractic Association, addressed agenda item 1aI - Rules of the Director of the Division of Registrations, Department of Regulatory Agencies, concerning physical therapy licensure, 4 CCR 732-1.

Mr. Mielke said the use of the title "doctor" has been a battle in the legislature every year for 30 years. Whenever health care entities want licensing, they ask for title protection, and they are granted the use of specific terms or abbreviations. Physical therapists, when licensed, were allowed to use the title "physical therapist", but nowhere in the statutes were they allowed to use the term "doctor". No other group has been able to use the term "doctor" by statute, except, for example, podiatrists, chiropractors, dentists, or medical doctors. It is inappropriate for the rule to expand the title for physical

therapists to "doctor". Naturopaths are one example of this fight over the title "doctor". There is a bill going through the process this session to regulate naturopaths. If the bill says that naturopaths can only call themselves "naturopaths" and not doctors, and then 20 years later that group says they want a rule that expands their title to "doctor", the fight and reasons for not allowing naturopaths to use "doctor" will have been lost. We feel this is an expansion of the organic black letter law. We ask that the Committee strike down rule 8.

Representative Gardner said he isn't clear on whether physical therapists can have doctorate degrees. Mr. Mielke said they may or may not. I'm not sure that the qualifications would be. The term "doctor" is for people who diagnose, but physical therapists do not diagnose. They treat a patient. You will not find the term "diagnose" in the physical therapy statute.

Tom Morris, Senior Staff Attorney, Office of Legislative Legal Services, addressed the Committee. He said the director's rule-making authority is exceedingly broad. Section 12-41-125, C.R.S., states that the director shall have the power to adopt all reasonable and necessary rules regarding physical therapists. The broadness of the statute is significant because in a lot of cases, the statutes say that an entity shall do specifically "this" and only "this". Section 12-41-104, C.R.S., specifies the use of titles by physical therapists. It allows physical therapists to use certain titles, including "P.T." and any generally accepted terms that indicate that the person is a physical therapist. It is silent with regard to the title "doctor", but it doesn't prohibit a physical therapist from using that term. It does prohibit people from using terms that would lead others to think they are physical therapists when they are not.

Mr. Morris said rule 8 requires a physical therapist that uses the title "doctor" to actually have a doctorate degree. If the person has a doctorate, that person can also refer to himself as a physical therapist. The Office's reading of the rule is that the rule allows a physical therapist to make only a truthful and nonmisleading use of the fact that the physical therapist holds a doctorate degree. The public is being informed that the person is a physical therapist, in addition to the fact that they have a doctorate. That seems appropriate. There is some ambiguity because the statute is silent with the use of the term "doctorate", but the rule seems reasonable because it's truthful and not misleading.

Mr. Morris said this conclusion is reinforced by the sunset review statute. Section 24-34-104 (1) (a), C.R.S., states the general assembly finds that regulatory agencies tend to become unnecessarily restrictive and that the

sunset review process helps determine the least restrictive regulation consistent with the public interest. The rule is consistent with this statutory policy. By allowing truthful, nonmisleading use of the fact that a physical therapist has a doctorate degree, the rule adopts the least restrictive regulation consistent with the public interest.

Mr. Morris said the rule does not conflict with any other statutes with regard to use of the term "doctor". The statute most directly on point is section 12-36-106 (1) (d), C.R.S., for medical doctors. It states that the practice of medicine means using the title M.D., D.O., physician, surgeon, or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of persons, except as otherwise expressly permitted by the laws of this state. This statute is also silent with regard to use of the terms "Doctor" and "Dr.". The general assembly's overall approach is that you have specific titles, but use common sense. Rule 8 does not just allow physical therapists to use the terms "M.D.", "D.O.", "physician", or "surgeon". It requires the use of the term "doctor" to include the fact that the user is a physical therapist. It allows only truthful and nonmisleading use of the term "doctor". We therefore recommend that Rule 8 be extended.

Representative McGihon said Mr. Morris' point is that what rule 8 applies is common sense. In any field, you can use the term "doctor". Mr. Morris said it isn't limited to the health care area. You can be an aerospace engineer and use the term "doctor". The point is that you have the words "physical therapist" to accompany the term "doctor".

Ira Gorman, Physical Therapist, testified before the Committee. He said he supports the rule. It is a matter of title versus academic degree. The rule clarifies the use of titles of the many people who have doctorates who are physical therapists. The rule supports a policy that individuals who earn doctorate degrees use the term "doctor", but also the term "physical therapist". Also, Mr. Mielke said that physical therapists don't diagnose, but they are actually trained to diagnose.

Representative Gardner asked how many licensed physical therapists are there in Colorado? Mr. Gorman said approximately 4,000.

Representative Gardner asked how many of those are affected by this rule? How many can claim the title "doctor"? Mr. Gorman said about 1,000.

7:58 a.m.

Seeing no further discussion or testimony, Representative McGihon moved that Rule 8 of the Director of the Division of Registrations be extended and asked for a yes vote. The motion passed on a 8-0 vote, with Senator Groff, Senator Veiga, Senator Ward, Representative Carroll, Representative Cerbo, Representative Gardner, Representative McGihon, and Representative Roberts voting yes.

7:59 a.m.

Hearing no further discussion or testimony, Representative McGihon moved House Bill 07-1167 to the committee of the whole with a favorable recommendation. The motion passed on a 8-0 vote, with Senator Groff, Senator Veiga, Senator Ward, Representative Carroll, Representative Cerbo, Representative Gardner, Representative McGihon, and Representative Roberts voting yes.

Sharon Eubanks, Deputy Director, addressed agenda item 2 - OLLS Budget Update.

Ms. Eubanks said that when the Office got the Committee's approval of the Office budget in January we told you it is not uncommon for changes to be made to the budget. That is what has happened. Based on the Joint Budget Committee's common policies, the Executive Committee directed us to adopt the common policies, so the budget has changed. The common policies included a decrease to the salary survey line from 3.6% to 3.5% and an increase in merit increases from 0.92% to 1.37%. There is also a reduction in personal services from 0.2% to 0.5%. The bottom line is that these changes increased our budget by \$3,182. We just wanted to make you aware that these changes were made.

Senator Veiga said Charley Pike needs to testify on retention of counsel.

Charley Pike, Director, Office of Legislative Legal Services, addressed the Committee. He said the bill to implement Amendment 41 has been introduced and that means interrogatories will probably be done for the bill. Our concern if that happens is that it will be on an expedited briefing schedule and oral arguments will be done soon. Because of that, the Office suggests the Committee retain Maureen Witt. She is already working on the litigation for HB 04-1455. She is up to speed on issues of legislative prerogative. She would assist our Office with the briefing on the case, and there is a possibility of her doing oral arguments if necessary. We don't know if this is going to happen, but in case it happens, it will move very quickly.

8:05 a.m.

Hearing no further discussion or testimony, Representative Cerbo moved to retain Maureen Witt. The motion passed on a 7-1 vote, with Senator Veiga, Senator Ward, Representative Carroll, Representative Cerbo, Representative Gardner, Representative McGihon, and Representative Roberts voting yes and Senator Groff voting no.

Mr. Pike said he also had an update from the counsel retained for the documents that were filed challenging the legitimacy of the election of four members. There have been more filings. Mary Severance filed a default judgment in the county clerk and recorder's office in El Paso county on two members (Senator Tapia and Representative Butcher). Counsel is recommending those members file an action to have the documents removed because they may be viewed as a lien against their property. I have not yet had an opportunity to speak to Senator Tapia or Representative Butcher about this. This is usually done in defense of members that have to be plaintiffs, but it seems an appropriate response.

Senator Veiga asked if they are looking into the false lien statute and particularly the recovery of attorney fees? Mr. Pike said he can ask them about that. They may also notify the district attorney that this has occurred.

8:10 a.m.

The Committee adjourned.